



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

999 18<sup>TH</sup> STREET- SUITE 200  
DENVER, CO 80202-2466  
Phone 800-227-8917  
<http://www.epa.gov/region08>

Ref: 8 ENF-UFO

JAN 26 2006

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Aleisa McCreless,  
ACM-Texas, LLC  
1419 West 29<sup>th</sup> Street  
Loveland, Colorado 80538

RE: Order to Stop the Sale, Use or Removal of  
NIC 325

Dear Ms. McCreless:

Please find enclosed an Order from the United States Environmental Protection Agency (EPA) concerning NIC 325. The enclosed Order requires that you stop the sale, distribution or use of the pesticide NIC 325. This Order shall extend to all quantities of this product wherever located within the ownership, control or custody of ACM-Texas, LLC. This Order is effective immediately.

Under Section 13 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136 (k) (a), EPA has the authority to stop the sale, distribution or removal of any pesticide believed to be in violation of the statute. The term "pesticide" means "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pests . . ." As explained in the enclosed Order, NIC 325 is not a registered pesticide and, therefore, cannot be sold or distributed for that purpose.

If you have questions concerning this Order, you are encouraged to contact Dennis Jaramillo from my staff at 303-312-6203

Sincerely,

*Elisabeth Evans*

Elisabeth Evans, Director  
Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosure

cc: Maria L Martinez, EPA Region 6



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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

2006 JAN 26 AM 11:27

DOCKET NO. FIFRA-08-2006-0003

FILED  
EPA REGION VIII  
HEARING CLERK

TO:

ACM-Texas, LLC  
1419 W. 29<sup>th</sup> Street  
Loveland, Colorado 80538

STOP SALE, USE

OR REMOVAL ORDER

**A. INTRODUCTION**

1. The United States Environmental Protection Agency (EPA) is authorized under Section 13(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. § 136(k)(a), to issue orders prohibiting the sale, use, or removal of any pesticide whenever there is reason to believe the pesticide is in violation of any provision of FIFRA.
2. The Director of the Technical Enforcement Program has been duly delegated the authority to issue such orders.
3. FIFRA § 12(a)(1)(A), 7 U.S.C. § 136(j)(a)(1)(A), provides that it shall be unlawful for any person in any state to distribute or sell to any person any unregistered pesticide under FIFRA Section 3, 7 U.S.C. § 136(a).
4. ACM- Texas, LLC sells and distributes a product, NIC 325, which makes pesticidal claims including, but not limited to, claiming that the product is a "natural insect control".
5. NIC 325 is not registered by EPA as a pesticide.
6. NIC 325 is not exempt from registration.
7. EPA hereby orders, ACM-Texas, LLC to stop the sale, use, or removal of NIC 325, EFFECTIVE IMMEDIATELY.

**B. ORDER**

8. This Order pertains to all quantities and sizes of NIC 325 within the ownership, control, or custody of ACM-Texas, LLC that are associated with pesticidal claims. The product shall not be sold, used, or removed other than in accordance with the provisions of this Order or any further Stop Sale, Use, or Removal Order that may be issued in connection with NIC 325.

9. Any person violating the terms or provisions of this Order shall be subject to CIVIL or CRIMINAL PENALTIES or both as set forth in FIFRA § 14, 7 U.S.C. § 136(l).

10. This order shall be EFFECTIVE IMMEDIATELY upon receipt by any representative of ACM-Texas, LLC.

#### **C. BASIS FOR ORDER**

11. On December 9, 2005, EPA received a referral from the Oklahoma State Cooperative Extension Service regarding NIC 325. Subsequently, an Enforcement Case Review (ECR) was performed by the Office of Pesticide Programs to determine compliance with FIFRA. According to the ECR, NIC 325 is an unregistered pesticide and, therefore, in violation of FIFRA. Although the label references an exemption under 40 CFR §180.950, this provision does not apply to NIC 325 and does not exempt NIC 325 from registration under FIFRA.

12. As the seller and distributor of a pesticide, you are in violation of FIFRA § 12(a)(1)(A), 7 U.S.C. § 136(j)(a)(1)(A), which provides in relevant part that it shall be unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under FIFRA Section 3, 7 U.S.C. § 136(a).

13. NIC 325 is in violation of 40 CFR 152.25(f)(3)(iii) for misleading statements on the label.

#### **D. OTHER MATTERS**

14. This Order specifically exempts the delivery of NIC 325 to any authorized agent of the United States Government.

15. For resolution of this Order, you are encouraged to contact:

Dennis Jaramillo  
US EPA Region 8 (ENF-UFO)  
999 18<sup>th</sup> Street Suite 200  
Denver, CO 80202

16. This Stop, Sale, Use or Removal Order must be supervised by the US EPA Region 8 Technical Enforcement Program unless you are otherwise notified.

1.26.06

Date

Elisabeth Evans

Elisabeth Evans, Director  
Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice




## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **STOP, SALE, USE, AND/OR REMOVAL ORDER** in the matter of **ACM-TEXAS, LLC., DOCKET NO.: FIFRA-08-2006-0003** was filed with the Regional Hearing Clerk on January 26, 2006.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Michael Risner, Enforcement Attorney, U. S. EPA – Region 8, 999 18<sup>th</sup> Street, Suite 300, Denver, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on January 26, 2006, to:

Aleisa McCreless  
ACM-Texas, LLC  
1419 West 29<sup>th</sup> Street  
Loveland, CO 80538

January 26, 2006

  
Tina Artemis  
Regional Hearing Clerk



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